

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.19 of 1995

John Kannedy .. Appellant

-Vs-

State by,
Inspector of Police
Tanjore Town (East)
Police Station .. Respondent

This Criminal Appeal is preferred under S.374 of The Code of Criminal Procedure against the conviction and sentence imposed by the District and Sessions Judge, Tanjore, in S.C.No.41 of 1992.

For Appellant : Mr.K.Magesh
for Mr.V.Sairam

For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

:JUDGMENT

M. CHOCKALINGAM, J.

This Criminal appeal has arisen from the Judgment of the learned Sessions Judge, Tanjore made in S.C.No.41 of 1992 wherein the appellant was found guilty under S.302 of Indian Penal Code and was sentenced to undergo life imprisonment.

2. The appellant/accused stood charged for an offence under S.302 of I.P.C. alleging that on 29.12.1991 at 12 noon, he caused the death of Irudhayasamy by attacking him with an aruval on his head and different parts of the body and also stood charged for an offence under S.32 4 of I.P.C. for biting one Mohammed Harrif, who caught hold of him when the appellant/accused was above to escape.

3. The case of the prosecution for the disposal of this appeal can shortly be stated as follows:

P.W.1 Patritia was residing with her parents at Jabamalai Matha Koil Street, Tanjore. Her senior paternal uncle, the deceased Irudhayasamy was also residing in the same street. The appellant/accused, the youngest brother

of the said Irudhayasamy was a liquor addict and was leading an immoral life. The said Irudhayasamy used to condemn the accused for his nefarious activities. Enraged over this, the appellant/accused got annoyed. In view of the same, the relationship between the deceased and the appellant got strained. A few days prior to the date of occurrence, the appellant came to the house of the deceased, quarreled with him and left the house by stating that "who are you to condemn me. I will see to it". On 29.12.1991 morning, Jayamary, the wife of the deceased has gone outside. At about 12 noon, the deceased was attending his work in his house. The appellant/accused armed with an aruval came to the house of the deceased and shouted "Irudhayasamy come out". Uttering these words, he trespassed into the house of the deceased. Seeing this, P.W.1 Patritia and P.W.2 Chandrasekaran, the son of the deceased raised alarm and followed the appellant. The appellant pushed the deceased down, sat over his chest, cut him indiscriminately on his neck and head and caused his death instantaneously. The inhabitants of the neighbouring house, on hearing the alarm, rushed to the place of occurrence. The appellant, who was armed with aruval, threatened them with dire consequences. At the request of P.W.5 Sundaram, one Harrif and Selvaraj caught the appellant red-handed. When they secured aruval, the appellant had bitten Mohammed Harrif in his hand. Immediately, P.W.5 phoned over to Tanjore East Police Station. P.W.9 Almas Ali, the Sub Inspector of Police, who was on duty by 12.30 P.M., received the telephonic message and proceeded to the place of occurrence. P.W.9 Sub Inspector of Police recorded the statement of P.W.1 Patritia, which was marked as Ex.P1. The Sub Inspector arrested the appellant/accused in the presence of Mohammed Harrif and Selvaraj and recovered M.O.1 Aruval from him under Ex.P6 Mahazar. P.W.9 took the appellant to the Police Station and registered a case in Crime No.1053/91 under S.302 of I.P.C. The express F.I.R. marked as Ex.P7 was despatched to the concerned Judicial Magistrate's Court immediately. P.W.10 Adheenam, who was the then Inspector of Police, Tanjore East, on receipt of the copy of the F.I.R. by 2.50 P.M., took up the investigation and proceeded to the scene of occurrence, and on inspection, he prepared Ex.P2 Observation Mahazar and Ex.P10 rough sketch. At about 3.30 P.M. the Investigation Officer recovered M.O.4 bloodstained wooden stick, M.O.5 a pair of bloodstained chappels, M.O.6 blood stained sleeved banian, M.O.7 bloodstained earth and M.O.8 sample soil under Ex.P3 Mahazar. The Investigation Officer conducted the inquest on the body of the deceased between 3.45 P.M. and 5.30 P.M. in the presence of the witnesses and prepared Ex. P11 inquest report. He enquired the witnesses present and recorded their statements. P.W.10 sent the body of the deceased along with the requisition for autopsy through P.W.8 Police Constable Chandrasekaran. On receipt of the said requisition, P.W.7 Dr.R.Premila, attached to the Government Hospital, Tanjore, commenced and conducted the autopsy on the dead body of Irudhayasamy. The Doctor witnessed the following injuries on the dead body.

1. An oblique incised wound over the left side of occipital region 7 x 24/2cm x bone deep cutting the occipital bone partially.
2. A horizontal incised wound over the left side of neck in its upper part 7 x ¾ x ½ cms with tailing anteriorly, measuring 4 cms. The wound is situated 3 cms below the left mastoid.
3. An incised wound over the right side of neck at its middle 6 x 1 ½ x ½ cms

horizontally placed with a tailing of 1 cm at its posterior end.

4. A gaping oblique incised wound over the front and right side of neck 9 x 5 cms cutting trachea oesophagus and partially cutting the 6 th cervical vertebra. It has also found to cut sterno-mastoid muscles partially and the right common carotid artery and right internal jugular vein (major blood vessels) and vaegous nerve.

5. An incised wound seen over the top of right shoulder 4 x 1 ½ x 1 cms.

6. An incised wound seen over top of right shoulder 2 x ½ x ¼ cms - ½ cm above wound No.5.

7. An oblique incised wound seen over the left supra clavicular region 3 x 1 ½ x ¼ cms at the junction of inner and middle 3rd of left collar bone.

8. An oblique incised wound over the upper part of right shoulder blade region 5 x ½ x ¼ cms.

The Doctor has issued postmortem certificate under Ex.P5. The Postmortem Doctor who was examined as P.W.7, has opined that the deceased would appear to have died of shock and haemorrhage due to multiple cut injuries.

4. At about 8.30 P.M., P.W.10 recovered M.O.2 bloodstained full sleeved shirt and M.O.3 bloodstained lungi were recovered under Ex.P4 Mahazar.

On a requisition made by the Investigation Officer, the accused was remanded to judicial custody on 30.12.1991. P.W.11, Ramaiyan, who succeeded to the Office of P.W.10 as Inspector of Police, Tanjore Town East, took up the further investigation. The material objects recovered by the Investigation Officer during investigation were sent for chemical analysis under Ex.P12 requisition. Ex.P13 is the Chemical Analyst's Report, while Ex.P14 is the Serologist's Report. P.W.11 Investigation Officer examined Dr.Sellaraman, who gave treatment to Mr.Harrif, who sustained injuries at the time of occurrence. On completion of the investigation, P.W.1 Investigation Officer laid the final report under Ss 302 and 324 of Indian Penal Code.

5. In order to prove the charges levelled against the accused, the prosecution has examined P.Ws.1 to 11, marked Exs.P1 to P15 and produced M.Os.1 to 10. The appellant-accused when questioned under S.313 of Code of Criminal Procedure, has flatly denied all the statements made by the witnesses as false. No defence witness was examined. After hearing both sides, the learned Sessions Judge found the accused guilty under S.302 of I.P.C. and sentenced him to undergo life imprisonment, while he acquitted the accused of the charge under S.324 of I. P.C. Hence, this appeal.

6. The learned Counsel appearing for the appellant interalia would submit that the prosecution has not proved the case beyond reasonable doubt; that both the eyewitnesses are close relatives of the deceased; that P.W.1 was none else, but a son of another brother of the deceased; that P.W.2 was the son of the deceased himself; that the motive attributed to the accused for committing such a grave crime of murder was very flimsy; that that apart, the prosecution has not proved the said motive also; that there is vital discrepancy between the evidence of P.Ws.1 and 2, who according to the prosecution are the eyewitnesses, and the medical evidence; that according to the postmortem report, eight numbers of cut injuries were found on the body of the deceased, but P.Ws.1 and 2, though they claimed to be the eyewitnesses, who were present nearby the place of occurrence, have not correctly accounted for the same; that Ex.P1 could not have been the First Information Report regarding the crime; that it is pertinent to note that Exs.P2, P3 and P4 have reached the Magistrate's Court only on 30.12.199 1, and under such

circumstances, a great doubt is cast upon the prosecution version; that the evidence of P.Ws.1 and 2 is inconsistent to each other; that the lower court has not taken into consideration that P.W.3, who according to the prosecution, was one of the eyewitnesses, has turned hostile; that the lower court has not believed the evidence of the prosecution with regard to the charge under S.324 of IPC against the appellant, and under such circumstances, the lower court should have rejected the case of the prosecution against the accused under S.302 of IPC on the same evidence, and hence the verdict of the trial court has got to be set aside by allowing the appeal.

7. Countering to the above contention, the learned Additional Public Prosecutor would submit that there are no merits in the appeal; that the prosecution has examined P.Ws.1 and 2 who were the eyewitnesses and have narrated the events correctly and consistently; that it is true that P.W.3 has turned hostile, but P.Ws.4 and 5 have clearly deposed to the fact that following the commission of the crime, the accused was caught red-handed; that on information given by P.W.5, a case has been registered; that the investigation has been done without any delay whatsoever; that there is nothing to suspect the evidence adduced by the prosecution with regard to the arrest and recovery of the material objects; that all the material objects were subjected to chemical analysis; that the medical evidence stands in full corroboration of the ocular evidence; that there are no merits in the appeal, and hence, the same has got to be dismissed.

8. The charge that was levelled against the accused, the appellant before this court was that he murdered his elder brother Irudhayasamy, the deceased, at 12 noon on 29.12.1991 at his residence. In order to prove the said charge, the prosecution has examined P.Ws.1 and 2 as eyewitnesses. P.W.1 is the daughter of one of the brothers of both the deceased and the appellant, while P.W.2 is the son of the deceased. From the evidence, it would be clear that the appellant was leading a wayward life and was a drunkard; and that Irudhayasamy used to condemn his activities. Both the witnesses have deposed that a few days prior to the occurrence, the appellant came to the house of Irudhayasamy, quarrelled with him and uttered words of threat. According to the witnesses, on 29.12.1991, when Irudhayasamy was inside the house alone, the accused armed with M.O.1 aruval, came to the residence and shouted from outside "Irudhayasamy come out" and so saying, he trespassed into the house. Looking at this, the witnesses followed him and could see the appellant pushing Irudhayasamy down and cut him indiscriminately on his head, neck and other parts of the body. The presence of the witnesses at the time of occurrence is not disputed by the accused during the course of the cross examination. It is pertinent to note that P.W.1 was closely related to both the appellant and the deceased. The appellant is unable to show any reason or circumstance to disbelieve the evidence of these witnesses. Their evidence is not shaken by the cross examination, and nothing worth mentioning is seen brought out in their evidence in favour of the appellant. Hence, their evidence cannot be rejected on the sole ground that they are related to the deceased. It remains to be stated that the occurrence has taken place inside the residence of the deceased, and hence, the close relations and inhabitants of the house alone could witness an occurrence, which takes place inside the residence. The court is of the view that their evidence is cogent, convincing and acceptable.

9. In the instant case, the accused arming with Aruval was caught at

the place of occurrence by the neighbours. This fact is clearly spoken to by P.Ws.4 and 5. This is one of the strong circumstances connecting the accused to the crime in question. Just half an hour from the time of occurrence, P.W.5 has brought the incident to the notice of the police. On receipt of the said information, P.W.9, Sub Inspector of Police has proceeded to the spot immediately and recorded Ex. P1 statement from P.W.1 at 1.00 P.M. On the strength of Ex.P1 complaint, he has registered a case against the accused under S.302 of I.P. C. by 2.15 P.M. The arrested accused along with the weapon was taken from the place of occurrence to the Police Station immediately. On receipt of the copy of the F.I.R., P.W.10 the Investigation Officer took up investigation, proceeded to the scene of occurrence, prepared Ex.P2 Observation Mahazar and Ex.P10 rough sketch, conducted inquest on the body of the deceased in the presence of the witnesses and prepared Ex.P11 inquest report.

10. The Doctor, who conducted autopsy on the body of the deceased, has been examined as P.W.7, and the postmortem report has been marked as Ex.P5. According to P.W.7 the Doctor, Irudhayasamy would appear to have died of shock and haemorrhage due to multiple cut injuries. From the medical evidence, adduced by the prosecution, it cannot be disputed that the injuries found on the body of the deceased Irudhayasamy would have been caused with M.O.1 aruval. The Doctor has opined that the injury No.4 was fatal and would be sufficient to cause the death instantaneously. The medical evidence as adduced above, has fully supported the ocular evidence, adduced by the prosecution through P.Ws.1 and 2. Without any hesitation, the court has to necessarily accept the ocular evidence coupled with the medical evidence and hold that Irudhayasamy died on account of the homicidal violence, which was perpetrated upon the deceased by the appellant.

11. Apart from the above, M.O.1 bloodstained aruval, the weapon used by the appellant/accused for attacking the deceased along with all the other material objects, including the clothes of the deceased, the clothes of the appellant/accused, etc., were subjected to chemical analysis and found to contain the human blood of 'O' Group, which is tallying with the blood group of the deceased. All these materials would indicate that it was the appellant/accused who committed the offence. The Court is unable to see any merit in the contentions put forth by the appellant's side. Under the circumstances, the learned Sessions Judge was justified in convicting the accused under S.302 of I. P.C. and in sentencing him to life imprisonment. This Court has no reason to interfere with the finding of the trial Court. Hence, this appeal is liable to be dismissed.

12. In the result, this criminal appeal is dismissed, confirming the judgment of the lower Court. The learned Sessions Judge shall take steps to commit the accused to prison to undergo the remaining period of sentence.

Index: Yes (P.S.M.J.) (M.C.J.)

Internet: Yes 19-8-2002

To:

1. The Sessions Judge,
Tanjore District.
2. The Sessions Judge,

Tanjore District,
Through The Principal Sessions Judge,
Thanjavur.
3. The District Collector,
Thanjavur.
4. The Director General of Police,
Chennai 4.
5. The Superintendent,
Central Prison, Trichy.
6. The Inspector of Police,
Thanjavur Town (East).
7. The Judicial Magistrate,
No.I, Thanjavur.
8. The Judicial Magistrate,
No.I, Thanjavur,
Through The Chief Judicial Magistrate,
Thanjavur.
9. The Public Prosecutor,
Madras.

nsv/
P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.

Judgment
in
C.A.No.19 of 1995